IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
AT BILASPUR

WRIT PETITION NO. 1188 OF 2002

PETITIONERS : 1. Dr.Atin Kundu, aged about 25 years
S/o. Lates Shri N.K.Kundu
R/o. MIG-185, Tatibandh
Raipur (C.G.).

2. Dr.Shailendra Pratap Singh
aged about 25 years
S/o. Shri P.S.Takshak
R/o. C-8, Green Valley
Behind Hotel Chhattisgarh
Raipur (C.G.).

P.R. No. 1205/02
Presented by Shri Surendra Pandey
dated 20.06.02

3. Dr.Ajay Tharani
aged about 25 years
S/o. Shri I.L.Tharani
R/o. D-292/5, Tagore Nagar
Raipur (C.G.).

4. Dr.Krishna Kumar
aged about 25 years
S/o. Shri J.P.Khote
R/o. H.No.7/959 Om Nagar
Jarhabhata
Bilaspur (C.G.).

5. Dr.Raghavendra Singh
aged about 27 years
S/o. Dr.J.S.Kachhawaha
R/o. 409, Sunder Nagar
Raipur (C.G.).

6. Dr.Santosh Motawani
aged about 26 years
S/o. Shri V.D.Motawani
C/o. Santosh Gudakhu Factory
Torwa, Bilaspur (C.G.).

7. Dr.Kshitij Khaparde
aged about 24 years
S/o. Dr.A.R.Khaparde
R/o. Qr.No.3-B/St.No.48
Sector-8, Bhilai Nagar
District Durg (C.G.).

8. Dr.Neety Agrawal
aged about 23 years
D/o. Shri. N.L.Agrawal
R/o. B-3, Ravi Nagar, near
New Bus Stand, Raipur (C.G.).

9. Dr.Bhawana Pipersania
D/o. R.K.Pipersania
aged about 26 years
R/o. Matrinagar, Bhilai
District Durg (C.G.).

Contd..P/

(1) (2)

: 10. Dr.Tribhuwan Sahu
aged about 27 years
S/o. Shri C.P. Sahu
R/o. Village Karumauha
P/o. Basnajhar, Via-Kharsia
District Raigarh (C.G.).

11. Dr.JagdishKumar Ghore
S/o. Shri K.R.Ghore
aged about 26 years
R/o. Dhanase Colony
V.K.Raikwar's House
Narsinghpur (M.P.)487001.

12. Dr.PankaJ Sahu
aged about 26 years
S/o. Dr.B.R.Sahu
R/o. Pooja Marg (R-3)
Vinoba Nagar, Bilaspur 495004 (CG).

13. Dr.Nitin Kashyap
aged about 25 years
S/o.
R/o. Behind Amdi Mandir
Deepak Nagar, Durg-491001 (C.G.).

14. Dr.Basant Maheshwari
aged about 28 years
S/o. Shri S.L.Maheshwari
R/o. Village Putidih, P/o.
Churaghantha, Distt. Janjgir-Champa
Pin-495688 (C.G.).

15. Dr.Sunil Kumar Mall
aged about 24 years
S/o. Shri B.N.Mall
R/o. Shanti Nagar Ward,
Jagdalpur, Bastar (C.G.).

16. Dr.Nivedita Joshi
aged about 24 years
D/o. S.S.Johhi
R/o. Near Rohini Puram Gate
Behind Anu Nursery, Raipur (C.G.).

17. Dr.Samita Das,
aged about 24 years
D/o. Shri J.C.Das
R/o. 23, Virdi Colony, P/o. R.S.U.
Raipur (C.G.).

18. Dr.Nimisha Sakarkar
aged about 24 years
D/o. Shri D.R.Sarkarkar
R/o. Phool Chowk,
Raipur (C.G.).

19. Dr.Reena Channawar
aged about 24 years
D/o. Shri N.G.Ghannawar
R/o. Vijay Soap Lane
Fafadih, Raipur (C.G.).

Contd..P/3

(8) (3)

20. Dr.Anju Hotwani
aged about 24 years
C/o. M.D.Hotwani
R/o. 60, Hanuman Society
Kali Badi Chowk, Raipur (C.G.).

21. Dr.Dipak Purohit
aged about 24 years
S/o. Shri Virendra Kumar Sharma
R/o. Vill. Sanora, Banwasagar
District Jhansi (U.P.).

22. Dr.Rohit Kanoi
aged about 24 years
S/o. Shri Purushottam Kanoi
R/o. Badhaipara, Jhanda Chowk
Raipur (C.G.). 492001.

23. Dr.Prawash Kumar Chowdhry
aged about 24 years
S/o. Shri Chandra Mohen Chowdhary
R/o. C.M.Tex, G-136,
Textile Market, Pandri,
Raipur (C.G.).

24. Dr.Rajkumar Baranwal
aged about 26 years
S/o. Shri Siyaram Baranwal
M.G.Road, Baloda Bazar,
Tahsil Baloda Bazar, Raipur (C.G).

25. Dr.Krishnakant Sahu
aged about 24 years
S/o. Shri B.P.Sahu
C/o. Shri U.S.Sahu (E.Er.)
E/2. P.W.D.Colony, Bayron Bazar
Raiour (C.G.).

26. Dr.Vivek Kumar Keshari
aged about 24 years
S/o. not known
Old Boys Hostel, Room No.36
Pt.J.L.N Medical College,
Raipur (C.G.).

27. Dr.Satish Kumar
aged about 30 years
S/o. Mr,Khedu Ram
Village Birkona, P/o. Dharampura
P/S Pipariya, Distt. Kawardha.

28. Dr.Praveen Kumar Jain
aged about 27 years
S/o. Dr.M.C.Mohant
R/o. Infront of Green House
Arya Nagar, Agrasen Chowk
Durg (C.G.).

29. Dr.Swamy Dev Bhupendra
aged about 26 years
S/o. Shri B.L.Dewangan
R/o. Vill.& P/O.Nagpura
District Durg (C.G.).

(9) (47)

: 30. Dr.Eesh Nigam
S/o. Shri R.K.Nigam
aged about 25 years
R/o. D-43, Vasant Vihar
S.E.C.L., Seepat Road
Bilaspur (C.G.).

VERSUS

RESPONDENTS : 1. STATE OF CHHATTISGARH
through - Secretary
Department of Public Health &
Family Welfare and Medical
Education,
D.K.S.BHAWAN, Raipur (C.G.).

2. Pt.Ravishankar Shukla
University
through its Registrar
Raipur (C.G.).

3. Deen,
Pt.Jawahar Lal Nehru
Medical College,
Raipur (C.G.).

4. The Board of Higher Secondary
Education, through its
Controller,
Raipur (C.G.).

5. Medical Council of India
Aiwan-E-Galib Marg,
Kotla Road,
New Delhi - 110002.

6. Director
Health Services
Government of Chhattisgarh
D.K.S.Bhawan
Raipur (C.G.).

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS AND DIRECTIONS INCLUDING WRIT OF MANDAMUS AND FURTHER DIRECTIONS ETC.

A.F.R.

**HIGH COURT OF CHHATTISGARH ; BILASPUR**

**W.P. NO. 1188/2002**

**WRIT PETITION UNDER ARTICLE 226 / 227 OF CONSTITUTION OF INDIA**

Dr. Atin Kundu & Ors — Petitioners

Versus

The State of Chhattisgarh & Ors. — Respondents

For petitioners: Shri Kanak Tiwari with Shri Sandeep Dubey, Advocate.

For respondents: Shri Ravindra Shrivastava, Advocate General with Dr. N.K. Shukla, Addl. Adv. General & Shri Sanjay K Agarwal, Deputy Advocate General for the respondent Nos. 1 to 4 & 6.

Shri V.V.S. Murthy, Addl. Central Govt. Standing counsel for respondent No.5.

Shri B.C. Mishra, Shri Rajeev Shrivastava, Shri Manindra Shrivastava, Shri M.P.S. Bhatia, Shri Prashant Jaiswal, counsel for the interveners.

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Date of Order

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10/12/2002

PRESENT:

**HON'BLE SHRI JUSTICE P.C.NAIK**

In Medical Council of India Vs Madhu Singh (AIR 2002 SCW 3742), the Apex Court has, if one may say so with respect, very aptly observed that "when time of admission to Medical Courses arrives, immediately comes to mind

Shakespeares' Othello, where it has been written "Chaos is come again". Inevitable result is that considerable time is lost by candidates chasing vires instead of virus." This very aptly applies to the case at hand.

2. The petitioners, who are 30 in number, have preferred this writ petition calling in question the validity of Rule 6.3 of the "Chhattisgarh Snatakottar Pravesh Pariksha Niyam 2002" in short, "PG Rules 2002" which mandates that completion of two years service in a Rural Primary Health Centre under the State Government on or before 30th April of the Pre-PG Examination is a must. The immediate effect being that even those candidates who have an outstanding academic career will not be able to take up the Pre – PG Examination in case they have not done service under a Rural Primary Health Centre for a period of two years though they may have been practicing in a rural area.

3. According to the petitioners, since coordination and determination of standards in institutions of higher education or research and scientific and technical institutions is a matter falling under Entry 66 of List 1 of the VII Schedule to the Constitution of India and, the Medical Council of India having framed the Post Graduate Medical Regulations, 2000, the State Government could not, in exercise of legislative powers under Entry 25 of List III (Concurrent), have any power to legislate and provide for an eligibility criteria for admission to Post Graduate Courses as

it is an occupied field under Entry 66 of the Union List. It was submitted that the Indian Medical Council Act, 1956 is a Central legislation and the regulations framed thereunder are a complete code which lay down the method that may be adopted for selection of the candidates for the Pre-PG course and the qualification which they should possess in order to make them eligible for being considered. The State cannot, according to the petitioners, fix any other criteria or lay down any other standard, which may have the effect of debarring a student to take up the Pre-PG test though he may be qualified and eligible as per the Medical Council of India Regulations. In short, the case of the petitioners is that Rule 6.3 of the Post Graduate Rules not only curtails but literally takes away the right of a candidate, who is otherwise qualified under the Medical Council of India Regulations to appear at a Pre-PG test unless he does compulsory service under a Rural Primary Health Centre under the State and this means 100 per cent reservation for in-service candidates which is illegal.

On the other hand, it is the case of the respondent-State that the State Government has full legislative competence and power to frame a rule to regulate admission into medical colleges and lay down conditions of eligibility, more so when these institutions are run out of the funds of the State Government and so long as the standards of medical education as prescribed by the Union Legislation are not in any way diluted or lowered down. It is the further

case that the impugned rule (6.3) relates to eligibility for appearance at the Pre-PG Examination and it in no way dilutes or lowers down the standard of education laid down by the Regulations of 2002 and on the contrary, the training and exposure will better equip them for higher studies. According to the State, the power of the Union to legislate is confined only to make law in regard to "standards of Medical Education" and not beyond that and the State has not in any way lowered the standard of medical education laid down by the Medical Council of India by framing Rule 6.3. At any rate, according to the State, the Government has taken a policy decision that only those, who serve in a Rural Primary Health Centre, will be eligible to take up the Pre-PG test and do Post Graduation. This policy decision, it was submitted, has been taken because the doctors were refusing to take up rural service because of which the rural population was suffering and in order to implement the obligation of providing rural health, Rule 6.3 has been incorporated. And that being a policy decision, it is not open to challenge before the Court. At any rate, it was submitted that right to education not being a Fundamental Right, the petitioners have no cause of action.

4. Before proceeding further, it would be appropriate to make a reference to the relevant provisions of the Pre-PG Rules and the entries in the VII Schedule to the Constitution of India, which were referred to at the time of hearing.

Rule 6 of the Pre-PG Rules, 2002 provides the eligibility criteria, which a candidate must fulfil for admission to Post Graduate Courses. Relevant part of Rule 6.3 thereof reads thus:

> "Has completed 2 years service in a rural Primary Health Centre under the State Government on or before 30th April of the Pre-PG Examination. For this the candidate will have to submit a certificate given by the Director of Health Services Chhattisgarh in the prescribed format."

Reference may also be made to the relevant entries of the VII Schedule to the Constitution of India to which reference was made. These are quoted thus:

> Entry 66 of List I (Union List)
>
> "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.
>
> Entry 25 of List III (Concurrent List)
>
> "Education, including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.
>
> Entry 6 of List II (State List)
>
> "Public health and sanitation; hospitals and dispensaries."

5. The Indian Medical Council Act, 1956 (in short, the 'Act') was enacted to provide for the reconstitution of the Medical Council of India (in short, the M.C.I.) and maintenance of a Medical Register for India and for matters connected thereof. One of the objects of the Bill and reasons

amongst other, is to provide for the formulation of a Committee of Post Graduate Medical Education for the guidance of universities and to advise universities in the matter of securing uniform standards for Post Graduate Medical Education throughout India.

6. Section 33 of the Act gives to the Council, with the previous sanction of the Central Government, the power to make regulations generally to carry out the purpose of the Act and these regulations may provide including others for the conduct of professional examinations, qualifications of examiners and the conditions of admission to such examinations. In exercise of these powers, the Medical Council of India with the previous sanction of the Central Government has made the Post Graduate Medical Education Regulations, 2000, which have admittedly come into force.

Under Clause 3.1 of the Regulation, the goal of Post Graduate Medical Education is to produce competent specialists and/or medical teachers.

Clause 8.3 of the Regulation lays down that every student selected for admission to a postgraduate medical course in any of the medical institution in the country, shall possess recognized MBBS degree or equivalent qualification and should have obtained permanent registration with the Medical Council of India or any of the State Medical Councils or should obtain the same within one month from the date of

admission, failing which the admission of the candidate shall be cancelled.

Clause 9 of the Regulation relates to selection of postgraduate students and being relevant for the purpose of this case, is quoted *in extenso:*

> "(1) Students for postgraduate medical courses shall be selected strictly on the basis of their academic merit.
>
> (2) For determining the academic merit, the University/institution may adopt any one of the following procedures both for degree and diploma courses:-
>
> (i) On the basis of merit as determined by a competitive test conducted by the state government or by the competent authority appointed by the state government or by the university/group of universities in the same state; or
>
> (ii) On the basis of merit as determined by a centralized competitive test held at the national level; or
>
> (iii) On the basis of the individual cumulative performance at the first, second and third MBBS examinations, if such examinations have been passed from the same university; or
>
> (iv) Combination of (i) and (iii):
>
> Provided that wherever entrance test for postgraduate admission is held by a state government or a university or any other authorized examining body, the minimum percentage of marks for eligibility for admission to postgraduate medical course shall be 50 percent for general category candidates and 40 percent for the candidates belonging to Scheduled Castes, Scheduled Tribes an Other Backward Classes:
>
> Provided further that in non-governmental institutions fifty percent of the total seats shall be filled by the competent authority and the remaining fifty percent by the management of the institution on the basis of merit."

Thus, it would be seen that under Clause 9, a student for selection for admission to a postgraduate course, must possess a recognized MBBS degree or equivalent qualification and should have obtained a permanent registration and the selection is to be made strictly on the basis of the academic merit. Under the Proviso, only those students will be eligible for admission who have secured 50 percent of marks if belonging to the general category and 40 percent of marks if belonging to SC, ST or OBC at the Entrance Examination.

7. Challenge was also raised to Rule 6.3 of P.G. Rules 2002 on the ground that it lays down a condition, which was impossible to fulfill by 30th April 2002 and it should therefore be struck down. According to the petitioners, since the State of Chhattisgarh came into existence on 01/11/2000, it was impossible for any one to put in two years of rural service under a Primary Health Centre under the Government of Chhattisgarh because this is what is required under the Rules. In view of the definition of the word "State Government" under Rule 2.1 which defines it to mean the "Government of Chhattisgarh". Thus, it was submitted that ineligible students had, on a wrong certification, been held eligible to appear in the examination whereas the petitioners had been wrongfully deprived from undertaking the test.

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In reply, it was contended by the learned Advocate General that the interpretation of Rule 6.3 as put by the petitioners, was not correct. The word "State Government", it was submitted, cannot be confined to the Government of Chhattisgarh, but also includes the State of Madhya Pradesh. Accordingly, it was submitted that a candidate, who had put in two years of rural service in a Rural Primary Health Centre either under the Government of Madhya Pradesh, or under the Government of Chhattisgarh on or before 30th April, 2002, is eligible to undertake the Pre-PG Examination and as such the candidates, who were issued admit cards, are those who had put in two years of service under a Rural Primary Health Centre under the Government of Madhya Pradesh and/or Government of Chhattisgarh.

8. Opposing the prayer, the learned Advocate General submitted that the State was justified in incorporating Rule 6.3, as an eligibility criteria. At any rate, it was submitted that though the State could not dilute the standard laid down by the Medical Council of India, it was perfectly within its right to provide something in addition to the standard laid down by the Medical Council of India. Reliance is placed on the decision of the Apex Court in **R. Chitralekha Vs. State of Mysore**, 1964 (2) SCC 1823. It was also submitted that the condition of two years mandatory rural service has been introduced because, the doctors were not prepared to do rural service. A lot of statistics was placed before the Court in support of his contention. According to the State, out of

1792 sanctioned posts, 588 posts are lying vacant out of which 438 are in the rural areas. It was submitted that the action was deemed necessary because it was felt by the State that the doctors do not co-operate with the State Government to fulfill the Constitutional obligation of the State as stipulated in Article 47 of the Constitution of India, which enjoins the Government to provide medical facilities to the citizens. According to the State, the students who obtain their degree course from the State funded medical colleges have a social obligation to serve the State and specially those areas which lack medical facilities. It was to meet this challenge that the State Government had incorporated Rule 6.3 so that those doctors who are anxious to obtain postgraduate degree/diploma are obliged to put in two years of mandatory rural service under the State Government. It was further submitted that this exposure would further equip these young doctors and help to improve their standard for higher medical education. It was also submitted that Rule 6.3 in no way offends clause 9 of the Regulations framed by the Medical Council of India, for it has nothing to do with the selection criteria, but is in fact an eligibility criteria laid down by the State Government and it cannot be construed as providing for 100% reservation for in-service candidates.

9. At this stage, it will be relevant to mention that after the interim order was passed, the State Government promulgated an ordinance – "Chhattisgarh Medical

Snatkottar Pravesh Pareeksha Niyam, 2002 (Sanshodhan) Adhyadesh, 2002" [hereinafter referred to as "Chhattisgarh Adhyadesh (No.8 of 2002)] which was brought into force from 15-05-2002. By this ordinance, an explanation has been added to Rule 6.3. This explanation reads thus:

> "For the purposes of Rule 6.3 above, the expression "under the State Government" shall include, and be deemed to have always included, the State Government as it pre-existed prior to 1st November 2000 in relation to area now comprised in the State of Chhattisgarh."

The ordinance further provides that notwithstanding anything contained in the Chhattisgarh Medical Snatkottar Pravesh Pareeksha Niyam, 2002, any action taken, proceedings accomplished, or anything done, under the provisions of Rule 6.3 of the said rules, shall be deemed to have been done or carried out under the provisions of this Ordinance. This Ordinance subsequently has been replaced by "Chhattisgarh Chikitsa Mahavidyalayon Ke Snatakottar Pathyakramon mein Pravesh Adhiniyam 2002" (Act no.26 of 2002).

10. It was also contended on behalf of the State that the petitioners were under a mistaken notion that the right to seek admission to the Post Graduate Courses was a fundamental right when it in fact it is not as held by the Apex Court in **Unni Krishnan, JP & Others Vs State of Andhra Pradesh** (A.I.R. 1993 SC 2178). It was further submitted that the criteria laid down by the State

Government was in the realm of a policy decision of the State which was in exercise of its multifarious activities of governance under the Constitution and since it was based upon the perception of the State Government as a welfare Government, the Court could not sit in appeal over the said policy decision. It was also submitted that looking to the needs of rural people, the policy could not be characterized as arbitrary. It was the further submission that since the Government spends lakhs of rupees in imparting Graduate and Post-Graduate Medical Education, it was perfectly within its right to lay down a criteria making rural service mandatory for a person seeking admission to the Post-Graduate Classes.

11. Notice of the petition was also served on Medical Council of India on whose behalf Shri V.V.S. Murthy, Additional Standing Counsel for Central Government, has entered appearance. But, inspite of time having been granted, he has not filed any return but stated that he would support the Government's stand.

12. Prayer for intervention was also made on behalf of Dr.Smt. Jenevibha, Dr.A.K.Humane, Dr.K.K. Ramteke, Dr. Nanakram Sachdev and Dr.M.K. Rai, which was granted, and Shri B.C.Mishra, Shri Manindra Shrivastava, Shri M.P.S.Bhatia, Shri Prashant Jaiswal and Shri Rajeev Shrivasta, Advocates who had entered appearance on their behalf and were also heard.

13. The learned counsel for the Interveners had invited attention to Clause-IX of M.C.I. regulations, which provides the different modes which could be adopted for selecting candidates for admission to P.G. Class. According to the learned counsel, since M.C.I. did not prescribe any eligibility criteria, it was open to the State Government to prescribe the same i.e., to lay down some conditions, which were required to be fulfilled before a person would be permitted to take up the test. It was also submitted that the persons who have rendered two years service under a Rural Primary Health Centre constitute a well defined class and mandatory service has a nexus with the object sought to be achieved which is to provide for Rural Health. Thus, the requirement was rational and not arbitrary nor did it offend Entry 66 of List I. It was submitted that at any rate, the provision of mandatory Rural Service does not in any way dilute the standard of education laid down by the Medical Council of India, hence it was valid.

14. Lengthy arguments were advanced by the learned Counsel for the petitioners on the exclusive power of the Medical Council of India to prescribe a minimum standard of Medical Education and it was stated that it has implicit power to supervise the qualification or eligibility standard for admission into the medical institutions. Reference was also made to the Post-Graduate Medical Education Regulations

2000, which are framed in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956.

15. The Regulations of 2000 lay down that the Post-Graduate Degree Course shall be of three years duration and the Post-Graduate Diploma Course shall be of two years duration and that the students of Post-Graduate Medical Courses shall be selected strictly on the basis of their academic merit. As has been noticed in the earlier part of the judgment, a candidate should possess a recognized M.B.B.S. Degree or equivalent qualification and should have a permanent registration of the Medical Council of India or any State Council or obtain the same within one month from the date of his admission. Apart from this, no other criteria is laid down. That the teaching and syllabus is as per the norms laid down by the Medical Council of India is not disputed. The bone of contention, however, is whether the prescription of two years rural service relates to or can be said to relate to, "standard of education" and, therefore, beyond the legislative competence of the State Government. According to the petitioners, it does and in support of their contentions, reliance is placed on the decision of the Apex Court in **Gujarat University v. Shri Krishna** (AIR 1963 SC 703) and **M. Saleena v. State of Kerala and others** (AIR 1979 SC 765).

16. The facts in Gujarat University's case (supra) were that the student had undertaken the Secondary School

Certificate Examination through the medium of Marathi being his mother tongue. He joined the St. Xavier's College, which was affiliated to the University of Gujarat and admitted in the section in which instructions were imparted through the medium of English. He completed First year's Arts Course and applied for admission to the classes preparing for Intermediate Arts Examination of the University through the medium of English. However, the Principal of the College informed the student that in view of the provisions of Gujarat University Act, 1949 and the Statutes 207, 208 and 209 framed by the Senate of the University, he i.e., Principal, could not, without the sanction of the University, permit him to join the classes in which instructions were imparted through the medium of English. On being moved, the University granted him permission to keep English as a medium of examination but not for instructions. This led to filing of the writ petition before the High Court in which, amongst others, the prayer was to declare certain provisions of the Gujarat University Act and Statutes 207, 208 and 209 as void and inoperative, prohibiting the University from objecting to or from prohibiting the admission of Shrikant to English medium Intermediate Arts class. The writ petition was allowed by the High Court and consequently the Gujarat University and the State of Gujarat went in appeal before the Apex Court. Two substantial questions were involved for determination – (1) whether under the Gujarat University Act, 1949 it is open to

the University to prescribe Gujarati or Hindi or both as an exclusive medium or media of instruction and examination in the affiliated colleges, and (2) whether legislation authorizing the University to impose such media would infringe Entry 66 of List I, VII Schedule to the Constitution.

17. The question involved in Gujarat University's case (Supra) is quite different and in the opinion of the Court, can have no bearing on the case at hand. The teaching in a particular language, availability of teachers who are well versed in that language and the non-availability of proper text-books in that language would definitely, as held by the Apex Court, effect the standard of education, obviously because for want of teachers and /or for want of text-books the students would naturally be affected, but such considerations do not arise in the case at hand. The regulations whether one does or does not do rural service, is not likely to have effect in lowering or raising the standard of education. A candidate for P.G. has already completed the prescribed course leading to Graduate Degree (M.B.B.S.). It is not disputed that the curriculum is as laid down by the Competent Authority and there is no State action which prescribes anything which affects or dilutes the curriculum laid down or prescribed by the appropriate authority. In other words, two years rural service in no of way affects the curriculum laid down by the M.C.I. though it has the affect of deferring the candidature for a P.G. class till such time as two years rural service is completed. The contention of the

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petitioners that prescription of two years rural services effects or relates to the standard of education and as such beyond the competence of the State Legislature, therefore, cannot be accepted. But the effect of this provision is to be considered i.e. whether it can be sustained in its present form.

18. Education including technical education and medical education after the 1976 Amendment Act, is covered by Entry 25 of List III and this, is subject to provision of Entry 63, 64, 65 and 66 of List I i.e., Union List which, as has been referred to above, relates to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. The word "subject to" clearly indicates that once the regulatory provisions are made under the Central Act, all contrary laws and State laws become ipso facto void in view of Clause( I) of Article 254 of Constitution of India except in the case falling under Clause (II) of Article 254. In the case at hand, admittedly, the Medical Council of India has only laid down that a candidate desiring to do P.G. Degree or Diploma must possess an M.B.B.S. Degree from a recognized institution and must have obtained registration or get himself registered within a month of his being admitted. No other criteria, regarding domicile or any other matter has been laid down. Naturally this has been and, as has been held in a number of cases left to the State Governments, which hold the test. In the case at hand, the basic qualification is not being ignored but what has been done is that a rider has been added – that of two years mandatory rural service. In other words, though a

person may possess the basic qualification i.e., M.B.B.S., Degree and he may fulfill the other requirements of residence or domicile, yet he will not be permitted to undertake the examination if he has not done the mandatory rural service. The question is, could this be done?

19. The State Government defends its action as has been seen above, on the ground that it is a policy decision and also because of need of doctors in the rural areas. It was contended that 81.64% of the population of the State reside in rural areas and out of 585 posts that are vacant, 438 vacancies are in the rural area. It was further pointed out that the Government had issued 353 posting orders out of which 100 in urban areas and 30 in rural areas, but the Government failed to explain as to why the 100 persons who joined in urban areas were not sent to the rural areas. The Government has also not been able to explain, on being asked, as to how many posting orders in rural areas were recalled, modified and whether any action was taken against those, who did not join the rural areas on being posted there on transfer. On the other hand, it was pointed out during the course of hearing by the learned counsel for the petitioner that the first thing that was done by the Government on the formation of the new State was to abolish all vacant posts. It was also pointed out by the learned Advocate General that there are 579 hospitals in rural areas out of which 91 hospitals are without Doctors since inception. Here again why no action was taken against

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those Doctors or why Doctors in service were not posted in the rural areas has not been explained. It is no doubt true that people in the rural areas are entitled to medical aid and attention but that by itself cannot be the basis to determine whether or not the provision relating to mandatory rural service is proper. Providing public health, sanitation, hospitals and dispensaries is the job of the State Governments in view of Entry 6 of List II of the VII Schedule and this duty, being a welfare State it is expected to discharge. As it appears from the pleadings, since the Government finds itself unable to discharge its obligation enjoined upon it by the Constitution under the said Entry, it has hit upon the bright idea for making rural service mandatory for seeking admission to P.G. course. Thus, the message appears to be, if you do not do the rural service, you will not be permitted to do your Post-Graduation. Is it not arm-twisting? Mandatory Rural Service, however, is not applicable in case of those students who are competing for the All India Quota. Thus, to put it plainly, a candidate desiring to do Post-Graduation has no choice and whether he likes it or not, and irrespective of his merit he has to do rural service, if he desires to do Post-Graduation.

20. In 1986 SC 1877 (Dinesh Kumar – Vs – Motialal Nehru Medical College, Allahabad), while dealing with the question of admission to M.B.B.S., B.D.S. and Post Graduate medical courses and reservation for All India basis, the Apex Court had clearly observed that "no weightage should be given to a

candidate for rural service rendered by him so far as admissions to Post Graduate courses are concerned". The Court further observed:

> ".....Even if an undertaking is taken from such a candidate that after obtaining M.D. or M.S. Degree, he will settle down in a rural area and serve the rural masses, it would in all probability serve no useful purpose because in the absence of the requisite facilities such as hospital, medical and surgical equipment, nursing etc. it would not be possible for him to give the advantage of his higher medical education to the rural masses and the higher medical education received by him would not be of any service to the community".

However, in 1992 (2) SCC 26 (Snehalata Patnaik – Vs – State of Orissa) it was suggested that for admission to Post Graduate courses weightage may be given up to a maximum of 5 % of marks in favour of in service candidates who have done rural service for 5 years or more (emphasis supplied). However, the Court hastened to add "we also clarify that these suggestions do not in any way confer any legal right on in-service students who have done rural service nor do the suggestions have any application to the selection of the students up to the end of this year (emphasis supplied). But in the case at hand and at the cost of repetition, it may be observed that it is not a case where the Government has provided for some small weightage to candidates who are desirous of taking up the Post Graduate examination. On the contrary, it has, as a matter of fact, made a cent per cent reservation in favour of those who have done rural service, the result being even a candidate who may have secured a gold medal in the M.B.B.S. and may have been a topper

throughout his medical student career, will not be able to acquire Post Graduation, if he has not done rural service, whereas a person who may have merely scrapped through the M.B.B.S. Course will be able to take up the said examination, if he has done two years of rural service. Thus, not academic merit, but rural service has been given importance under the rules. Prior to this and it was not disputed that in different Post Graduate disciplines seats were reserved for All India Quota, for general candidates and in-service candidates, but in view of clause 6.3, the category of institutional candidates is given a go bye and after excluding the 25% seats for All India Quota seats, all the available seats become reserved for only those who have served the Government for a minimum period of two years. It is no doubt true that a Government has a right to frame a policy and that the Courts are not to sit in judgment over the policy, but it is equally true that a policy must not be arbitrary, but it should be fair and not work any injustice. In the light of what has been discussed, the Court is of the opinion that the policy does not appear to be just and is also arbitrary and discriminatory.

21. During the course of arguments, reference was made to Dr. Preeti Shrivastava's case (1999 (7) SCC 120) by both, the counsel for the petitioner as also the counsel for the State, each giving his own interpretation to what has been held therein. The issue, as is clear from the judgment, that arose for consideration before the Constitution Bench in that

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case was whether apart from providing reservation for admission to the Post Graduate courses in Engineering and Medicine for special category candidates, it was open to the State to prescribe different admission criteria, in the sense of prescribing different minimum qualifying marks, for special category candidates seeking admission under the reserved category. It was held by majority that standard of education and admission criteria can be laid down under List I of Entry 66 and List III of Entry 25 by Central Legislation and that the State's competence under List III of Entry 25 to control or regulate higher education is subject to the standards so laid down by Union of India and inasmuch as States have competence to prescribe rules for admission to Post Graduate medical courses so long as they are not inconsistent with or do not adversely affect the standards laid down by the Union of India or its delegate. It was further held that once minimum standards are laid down, the States are competent to prescribe any further qualification for selecting better students as that would not adversely affect the standards so laid down.

22. The learned counsel for the petitioner laid much emphasis on the first part of the observations whereas learned counsel for the State laid emphasis on the second part of the observations made in the judgment and in a manner of speaking, both submissions to a limited extent, seem to be proper. However, one has to see in the context of the case at hand, whether Rule 6.3 which has been

prescribed by the Pre-PG Rules requiring two years mandatory rural service is in the nature of, as observed by the Apex Court, "a further qualification for selecting better students" for that is what is permissible. Thus what falls from the Apex Court is that no doubt under List I of Entry 66 it would be for the Central Government or its delegate to prescribe the standard of education and admission criteria, the State may prescribe any further qualification, but this further qualification has to be for selecting better students and naturally a selection of better students would not adversely affect nor any such qualification for selecting the best, be said to be something which would adversely affect the standard laid down by the Central Government or its delegate i.e., Medical Council of India. Thus, as has been held, the State has a right to control education including medical education but only so long as the field is not occupied by any Union Legislation. The State cannot also impinge on standards in institution for higher education because this is exclusively within the purview of the Union of India. While repelling the contention that the norms for admission have no connection with the standard of education or that the rules of admission are covered only by Entry 25 of List III, the Court, in paragraph 36 observed:

> "It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of

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education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of higher education. Standards of education in an institution or college depend on various factors. Some of these are:

(1) the calibre of the teaching staff;

(2) a proper syllabus designed to achieve a high level of education in the given span of time;

(3) the student-teacher ratio;

(4) the ratio between the students and the hospital beds available to each student;

(5) the calibre of the students admitted to the institution;

(6) equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges;

(7) adequate accommodation for the college and the attached hospital; and

(8) the standard of examinations held including the manner in which the papers are set and examined and the clinical performance is judged."

Further, the Court in paragraph 46 observed thus:

"……we cannot agree with the observations made in that judgment (State of M.P. – Vs – Nivedita Jain) 1981 (4) SCC 296 to the effect that the process of selection of candidates for admission to a medical college has no real impact on the standard of medical education; or that the standard of medical education really comes into the picture only in the course of studies in the medical colleges or institutions after the selection and admission of candidates…… the criteria for selection of candidates have an important bearing on the standard of education which can be effectively imparted in the medical colleges……Of

> course, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority....."

23. In the case at hand, the provisions of Rule 6.3 are not being defended on the ground that it prescribes a standard higher than that set down by the Medical Council of India and that the object is to select better candidates. On the contrary, it is being defended on the ground that since the State Government funds the medical colleges, it has a right to lay down a criteria of its choice and because it feels that as doctors are not prepared to serve in the local areas, the provision of this criteria will compel them to take up rural service for a period of two years under the Government if they desire to do Post Graduation in Medical Sciences. Thus, the object obviously is not what it should be.

24. It is no doubt true that in **State of Punjab Vs. Dayanand Medical College and Hospital and others** (2001 (8) SCC 664), it was held that a proper balance will have to be struck both, by the Medical Council of India and by the Central and State Governments in exercise of their respective powers and that the Medical Council of India a creature of Statute, cannot be ascribed with such powers so as to reduce the State Governments to nothing on and in respect of areas over which the States have constitutional mandate

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and goal assigned to them to be performed. But this was observed in the context of the facts involved in that case where the challenge was to the action of the State of Punjab in lowering minimum qualifying marks to 40% for speciality subjects and doing away with them altogether for basic subjects, contrary to regulation 9 of Medical Council Regulations which prescribed 50% minimum marks. The observations were more with respect to the policy of reservations for socially and educationally backward classes. However, in that case the action of the State of Punjab in reducing the lowering minimum qualifying marks and doing away with them altogether for basic subjects was held to be bad and struck down. In para 19 of the judgment it was observed thus:

> "We, therefore, find that the prescription made by the appellants reducing the minimum marks to 40% in the entrance examination for considering the eligibility of the candidates for admission to postgraduate medical courses and in respect of the basic subjects fixing no minimum standard is plainly in contravention of the Regulations framed by the Medical Council of India and that part of the notification will have to be ignored."

Consequently, it was ordered that if any student had secured less than 50% marks that admission alone will have to be cancelled. Thus, it is to be taken as a settled position that the standard laid down for medical education by the Medical Council of India are binding on the State and cannot be diluted though the State can provide higher or additional standards or conditions but it should be for the purpose of selecting better candidates and not for the purpose of

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excluding those who are otherwise eligible under the Regulations framed by the M.C.I. inasmuch as they possess the requisite qualifications.

25. There can be no quarrel with the submissions of the counsel for the State that right to higher education cannot be equated with the fundamental right under the Constitution as can be deduced from the decision of the Apex Court in **Unni Krishnan J.P. and Ors V State of Andhra Pradesh & Ors** (AIR 1993 SC 2178) wherein it did not approve the decision in **Miss. Mohini Jain V State of Karnataka** (AIR 1992 SC 1858) which indicated the right of education to be a fundamental right. But, it cannot be denied that when institutions for teaching and imparting knowledge have been established for the purpose of imparting education at all levels including Post Graduate, it implies that any person desirous of getting selected gets an opportunity for securing admission to these institutions to gain knowledge or gain specialization. To say that the State, in exercise of its obligation being a welfare State, will open institutions for imparting knowledge and that it will fix norms for admission according to its choice and that a prospective candidate will have no right to approach the Court of law against non-consideration of his candidature or some provision of a policy which to him appears to be discriminatory or takes away his right of consideration, will not be a reasonable, as this will give to the State an arbitrary xclude many at its whim and fancy.

Hence, though a right to higher education may not be a fundamental right but nonetheless, since there are institutions and provisions for admission thereto, a person whose candidature has been rejected, will have the right to approach the Court of law challenging the action on the ground that may be available though not as breach of a fundamental right. For, it should not be forgotten that a writ under Article 226 of the Constitution of India is not only for enforcement of any right conferred by Part III of the Constitution of India i.e., enforcement of fundamental rights, but can be also issued "for any other purpose" which obviously means that if the Court finds a particular action to be unjustified, it can set it at naught in exercise of its writ jurisdiction.

26. When we consider Rule 6.3, it covers only those who have put in two years rural service and excludes all others though they possess the requisite qualification laid down by the Medical Council for India from consideration for admission to the P.G. Courses. It cannot be said and indeed, nor was it contended that this was with an idea or intention of selecting the best for one can visualize how the standard of a young doctor working in an ill-equipped, ill-maintained Rural Primary Health Centre will improve his knowledge or standard. It is common knowledge that most of the Rural Primary Health Centres, which are areas where poor reside, do not even have basic facilities and infrastructure to treat the really ill and needy. Most of these

neither have any operation theatre nor X-ray machine, nor a Pathological Clinic nor appropriate medicines for treatment of serious diseases and all such patients are referred or transferred to the urban hospitals or are forced to go to private clinics in urban areas for treatment. Thus, how a student who desires to specialize in Surgery, Radiology, Pathology or Orthopedics or for that matter in any discipline will be better equipped, better trained and obtain higher standard than one serving in an urban hospital or one who has not put in any service under the government, but has done private practice in his own clinic or a hospital of repute, is difficult to comprehend. One fails to understand as to how treatment of routine diseases like cough cold, diarrohea and dysentery will raise the standard or make such persons better equipped for Post Graduation study vis-à-vis one who has to treat similar patients even in a government hospital in an urban area. Thus, the action of the government in framing Rule 6.3, which completely excludes those who have not put in two years of rural service, in the opinion of the Court, cannot be an exercise of power under Entry 25 of List III, but is a colourable exercise of power for practically compelling one to do service under a Primary Health Centre and as is obvious to make 100% reservation of the available seats for in-service candidates only. Thus, the question, which needs to be considered, is whether there can be cent percent reservation for in-service candidates, as this would be the effect of the Rule 6.3, which

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is the subject matter of challenge. It is no doubt true that the Government has the power to frame a policy and also lay down eligibility criteria, but both have to be reasonable and should not work to the prejudice of equally situated persons. As per the prevailing system, Post-Graduation was confined to three categories – All India Quota – Institutional or General candidates and In-service candidates and a percentage was fixed for each category. But, under the Rules in question, the institutional candidates or fresher, howsoever brilliant cannot now hope to have a Post Graduation unless he does service under a Rural Primary Health Centre.

27. Learned counsel for the intervener while supporting the State had invited the Court's attention to the decision of the Bombay High Court in case of **Dr. Aditya Shrikant Kelkar & Others V. State of Maharashtra** (AIR 1998 Bomby 260). In that case what weighed the Court, amongst others, was the consideration that the Government was spending large amount towards the medical education and that the rural people were also entitled to medical facilities. This is clear from the following passage extracted from paragraph 53 of the judgment, which reads thus:

> "----- we find that the impugned Government Resolutions cannot be successfully assailed as it is found that is open to the State Government to impose additional conditions. The State Government expends large amounts towards medical education which is far above the amounts recovered towards fees. The State Government is, therefore,

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> entitled to call upon the beneficiary of the expenditure viz. the doctors to perform medical service since the doctors have benefited from the medical education provided by the State, it is their duty to perform medical service. The State Government is duty bound to provide for medical facility in order to promote public health. The State Government is entitled to ensure public health and welfare as much in rural areas as in urban. Calling upon the doctors to perform rural service, therefore, is fully justified....."

28. There can be no dispute that State is providing funds for medical education but it should not be forgotten that it is the duty of the State Government to provide for education and indeed in a democratic welfare State, this is expected of the State. Saying that posts are vacant and doctors are not prepared to serve in the rural area is not sufficient. As a matter of fact, at the time of hearing the Court had raised query as to whether any advertisement was issued for the selection of doctors for being posted in rural areas and whether the posts could not be filled because of non-receipt of applications and also as to how many transfers and posting in rural areas were cancelled or changed by the Government. But this was not forthcoming. Be that as it may, the Government may consider if the situation is that the posts are going abegging, there is no reason why the Government, looking to the unemployment, has not taken steps for setting up of a Rural Health Service. At any rate, if it was thought necessary that services under the Rural Services would be an eligibility criteria, the Government could have made a reasonable provision for those who have

not done that service instead of excluding them at the threshold or as the petitioners had contended, permitted them to undertake the examination and provisionally selecting them subject to the rider that they would complete the rural service. According to the petitioners, the sudden change of the Rules, which were prevalent in the unified State, was like a bolt from the blue and it was only those who had probably never thought of doing the Post Graduation have suddenly got an opportunity to do so.

29. In **State of U.P. and Others V Pradip Tandon & others** (1975 (1) SCC 267), the question for consideration was whether the reservation of seats in Medical Colleges in favour of rural areas, hilly areas and Uttrakhand on the basis that the reservations are for socially and educationally backward classes was valid. The reservation made by State Government of U.P. in Medical colleges in favour of candidates coming from rural areas was held to be un-constitutional by the Supreme Court, as this was found to be a case of discrimination in favour of the majority of rural population to the prejudice of the students drawn from the general category. In paragraph 26 of the judgment, the Court observed that:

> " Eighty percent of the population in the State of Uttar Pradesh in rural areas cannot be said to be a homogeneous class by itself. They are not of the same kind. There occupation is different. Their standards are different. Their lives are different. Population cannot be a class by itself. Rural element does not make it a class. To suggest that the rural areas are socially and

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> educationally backward is to have reservation for the majority of the State."

30. A reference may also be made to a decision of Apex Court in the case of **Dr. Narayan Sharma V Dr. Pankaj Kumar Lehkar** (2000 (1) SCC 44), where the challenge was made to certain provisions contained in Assam Medical Colleges (Regulation of Admission to Post-Graduate Courses) Rules, 1994. Amongst others, the challenge was to Rule 4 (iv), which provided reservation for 20% seats for doctors appointed in State Health Services on regular basis. This Rule was quashed by the High Court of Assam, which decision was upheld by the Apex Court. The relevant passage reads thus:

> ".....Even if the Rule had provided for service in a rural area, it has been held that the classification is not a valid one....."

[Emphasis Supplied]

31. In the case of **K.Duraiswami & another V State of Tamil Nadu and others** (2001 (2) SCC 538), the challenge was to the Government order dated 09-2-1999, whereby 50% of the available seats for Post-Graduate Medical Education were reserved for in-service candidates on merit basis and it was further directed that 50% of seats available in each of the specialty shall be allotted exclusively to such candidates. The Government order further provided that if sufficient number of candidates is not available the vacancy shall be filled up by the non-service candidates merit basis and

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remaining 50% available seats for the open quota. The Apex Court in paragraphs 8 & 9 observed thus:

> "8. That the Government possess the right and authority to decide from what sources the admission in educational institutions or to particular disciplines and courses therein have to be made and that too in what proportion, is well established and by now a proposition well settled, too. It has been the consistent and authoritatively settled view of this Court that at the super-speciality level, in particular, and even at the postgraduate level reservations of the kind known as "protective discrimination" in favour of those considered to be backward should be avoided as being not permissible. Reservation, even if it be claimed to be so in this case, for and in favour of the in-service candidates, cannot be equated or treated on par with communal reservations envisaged under Article 15 (4) or 16 (4) and extended the special mechanics of their implementation to ensure such reservations to be the minimum by not counting those selected in open competition on the basis of their own merit as against the quota reserved on communal considerations.
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> 9. Properly speaking, in these cases, we are concerned with the allocation of seats for admission in the form of a quota amongst in-service candidates on the one hand, and non-service or private candidates on the other and the method or manner of working out in practice the allocation of seats among the members of the respective category. Could the State Government have legitimately made a provision allocating 50% of seats exclusively in favour of the in-service candidates and keep open the avenue for competition for them in respect of the remaining 50% along with others, denying a fair contest in relation to a substantial or sizeable number of other candidates who are not in service and who fall under the category of non-service candidates, will itself be open to serious doubt. One such attempt seems to have been put in issue

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before the Madras High Court which held that reservation in favour of the in-service candidates for the academic year 1992-93 should be confined to 50% and awarding of two additional marks, instead of one additional mark for each completed year of service in Primary Health Centres was un-constitutional and when the matter was brought to this Court, in the decision reported in State of Tamil Nadu Vs. T. Dilipkumar, the decision of the High Court has been upheld. This Court also further observed that the government should appoint a highly qualified committee to determine from year to year what, in fact, should be the percentage-wise reservation required for the in-service candidates, having regard to the then prevailing situation and that the percentage of 50% shall, if found appropriate, be reduced.

32. In **State of Tamil Nadu Vs. T. Dilip Kumar & Others** (2001(8)SCC 700) the challenge was to the order of the High Court at Madras which had held that reservation for in-service candidates in post graduate courses (both diploma and degree) should be confined to 50% and that award of two additional marks for each completed year of service in Primary Health Centres was unconstitutional. Dismissing the appeal, the Apex Court observed:

"4. Insofar as the additional mark awarded to in-service candidates serving in rural areas is concerned, the judgment of this Court in Dr. Dinesh Kumar v. Motilal Nehru Medical College is the answer to the argument that in-service candidates serving in rural areas will, after acquisition of postgraduate degrees, return to rural areas. The observations in this behalf have been cited by the High Court, and in our view, rightly.

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"6. In our view, the High Court was right in the view that it took, that no reservation beyond fifty per cent is ordinarily contemplated and this

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> percentage is what the High Court allowed. In striking down the additional mark for in-service candidates serving in rural areas, the High Court followed the decision of this Court."

This decision has been taken note of and followed by the Apex Court in its subsequent decision in Pre-PG Medical Sangharsh Committee & Another V Dr. Bajrang Soni and Others (2001 (8) SCC 694).

33. Thus, from what has been discussed above, it is clear that neither additional marks can be awarded to candidates for rural service nor can all available seats be reserved for rural candidates though a percentage thereof may be reserved for them. By analogy and applying this test to the case at hand there is no getting away from the fact that the effect of Rule 6.3 is that there is cent percent reservation for in-service candidates — because only those who have served under the Government, whether in a temporary, permanent or an ad-hoc/contractual capacity can hope to do post graduation in the State of Chhattisgarh. Even one who has devoted his service in a rural area as a private practitioner is debarred from taking up the Pre-P.G. test, as he is not eligible under the said Rule. Thus, will it be wrong to conclude that not practice in the rural area but only Government service in any capacity in a rural area is the intention behind Rule 6.3 ? In the opinion of the Court, the answer has to be in the affirmative. It is no doubt true that the State defends its action in framing Rule 6.3 on the ground that it provides eligibility criteria and nothing more.

However, that is not enough. For deciding whether the said provision is good or bad, what has to be seen, in the opinion of the Court, would be the effect that follows if that provision is to continue and for this purpose, the Court will be required to remove the veil. Once this is done, it becomes clear that only "in-service candidates" i.e., those who have rendered service in a Primary Rural Health Centre under the Government in any capacity whatsoever will alone be entitled to take up the Pre-PG test to the exclusion of all others howsoever brilliant they may be. It, therefore, follows that by incorporating Rule 6.3 the Government has tried to achieve or provided for cent percent reservation for in-service candidates — something, which it could not do directly, has been done indirectly. Accordingly, there is no escape from the conclusion that the provision contained in Rule 6.3 as it stands, cannot be sustained and it is liable to be annulled and it is ordered accordingly.

34. As a result of the discussions aforesaid, the petition needs to be and is hereby allowed on the ground mentioned above. Accordingly, the consequent action taken on the basis of Rule 6.3 of the Pre- P.G. Rules 2002, as it existed cannot also be sustained. It follows that the Government cannot fill up all the seats on the basis of the impugned Pre-P.G. test held by it. However, it will be open to the Government to make a provision fixing a percentage of seats for in-service candidates and for freshers i.e.

institutional candidates. To the extent of the reservation made, the Government may, if it so desires, select the candidates for the in-service seats from out of those who have taken the Pre-P.G. Test 2002 and hold a test for filling up the seats which may be provided for the freshers or institutional candidate or, in its discretion, it may conduct a fresh test for both the categories.

35. There shall however be no order as to costs.

**Sd/-**
**P.C.Naik**
**Judge**